Reg. No. KL/TV/82

KERALA GAZETTE

EXTRAORDINARY

PUBLISHED BY AUTHORITY

Vol. XXI] Trivandrum, Thursday, 16th December 1976 / 25th Agrahayana 1898 [No. 715

GOVERNMENT OF KERALA

Public (Political A) Department

NOTIFICATION

No. 162362/POL-A2/76/PD. *Dated, Trivandrum, 16th December 1976.*

The Governor has been pleased to order that the portfolios held by the late Shri K. M. George, Minister for Transport will be held by the Chief Minister until further orders.

G. BHASKARAN NAIR,
Chief Secretary.

PRINTED AND PUBLISHED BY THE S.C.P. AT THE GOVERNMENT PRESS, TRIVANDRUM, 1976.

©
Government of Kerala
1976

Reg. No. KL/TV/12

KERALA GAZETTE

EXTRAORDINARY

PUBLISHED BY AUTHORITY

Vol. XXI] Trivandrum, Thursday, 16th December 1976 / 25th Agrahayana 1898 [No. 713

SECRETARIAT OF THE KERALA LEGISLATURE

NOTIFICATION

No. 10440/LA 4A/76. *Dated, Trivandrum, 16th December 1976.*

The Kerala Highways Bill, 1976 together with the Statement of Objects and Reasons, the Financial Memorandum and the Memorandum regarding Delegated Legislation is published, under Rule 69 of the Rules of Procedure and Conduct of Business in the Kerala Legislative Assembly.

Dr. R. PRASANNAN,
Secretary,
Legislative Assembly.

PRINTED AND PUBLISHED BY THE S.G.P. AT THE GOVERNMENT PRESS,
TRIVANDRUM, 1976.

Fourth Kerala Legislative Assembly
Bill No. 285

THE KERALA HIGHWAYS BILL, 1976

A
BILL

to provide for the restriction of ribbon development along highways, for the prevention and removal of encroahment thereon for, the construction, maintenance and development of highways, for the levy of betterment charges and for certain other matters.

WHEREAS it is expedient to provide for the restriction of ribbon development along highways, for the prevention and removal of encroachment thereon, for the construction, maintenance and development of highways, for the levy of betterment charges and for certain other matters.

BE it enacted in the Twenty-seventh Year of the Republic of India as follows:—

CHAPTER I

Preliminary

1. *Short title, extent and commencement.*—(1) This Act may be called the Kerala Highways Act, 1976.

(2) It extends to the whole of the State of Kerala.

(3) This section shall come into force at once. The Government may, by notification in the Gazette, direct that all or any of the remaining provisions of this Act shall come into force in such area and on such date as may be specified in the notification:

Provided that the Government may, by notification issued in like manner, exclude any road or way or class of roads or ways situate in such area from the operation of all or any of the provisions of this Act.

2. *Definitions.*—In this Act, unless the context otherwise requires,—

(a) "animal" means any domestic or captive animal;

(b) "building" includes any erection of whatsoever material and in whatsoever manner constructed (including a farm building for agricultural purposes) and also includes plinths, doorsteps, walls (including compound walls and fences) and the like;

(c) "building line" means a line on either side of any highway or part of a highway fixed in respect of such highway or part by a notification under sub-section (1) of section 7;

(d) "cantonment" means a cantonment established under the Cantonments Act, 1924 (Central Act 2 of 1924);

(e) "Collector" means the Collector of the district and includes any officer appointed by the Government to perform the functions of a Collector under this Act;

(f) "control line" means a line on either side of a highway or part of a highway beyond the building line fixed in respect of such highway or part by a notification under sub-section (1) of section 7;

(g) "encroachment" means any unauthorised occupation of any highway or part thereof, and includes an unauthorised—

(i) erection of a building or any other structure, baloonies, porches, projections, on or over or overhanging the highway;

(ii) occupation of a highway beyond the prescribed period, if any, for stacking building materials or goods of any other description, for exhibiting articles for sale, for erecting poles, awnings, tents, pandals, boardings and other similar erections or for parking vehicles or stabling animals or for any other purpose, and

(iii) excavation or dumps of any sort made or extended on any highway or underneath such highway;

(h) "erect" with its grammatical variations in relation to a building means to construct, reconstruct, extend or alter structurally a building;

(i) "excavation" in relation to any piece of land does not include any working which does not pierce the surface of that piece of land; but includes wells and tanks;

(j) "highway" means any road or way over which the public have a right of way or are granted access and which is declared to be a highway under section 3, and includes—

(i) any land acquired or demarcated with a view to construct a highway along it;

(ii) the slopes, berms, borrow-pits, foot-paths, pavements and side, catch and boundary drains attached to such road or way;

(iii) all bridges, culverts, causeways, carriageways and other structures, built on or across such road or way; and

(iv) the trees, fences, posts, boundary kilometer stones, and other highway accessories and material or materials stacked on the road or way;

(k) "Highway Authority" means the authority appointed as such or to which the functions of such authority are entrusted under section 4;

(l) "highway boundaries" means the boundaries of a highway fixed in respect of such highway by a notification under sub-section (1) of section 7;

(m) "means of access" includes any means of access, whether private or public, for vehicles or for pedestrians and includes any street;

(n) "middle of highway" means the point halfway between the highway boundaries;

(o) "occupier" includes—

(i) any person who for the time being is paying or is liable to pay to the owner rent or any portion of the rent of the premises in respect of which such rent is paid or is payable;

(ii) an owner living in or otherwise using his premises;

(iii) a rent-free tenant;

(iv) a licensee in occupation of any premises; and

(v) any person who is liable to pay to the owner damages for the use and occupation of any premises;

(p) "owner" means,—

(1) when used with reference to any premises, the person who receives the rent of the said premises or who would be entitled to receive the rent thereof if the premises were let and includes,—

(i) an agent or trustee who receives such rent on account of the owner;

(ii) an agent or trustee who receives the rent of, or is entrusted with, or concerned for, any premise devoted to religious or charitable purposes;

(iii) a receiver, sequestrator or manager appointed by any court of competent jurisdiction; and

(iv) a mortgagee-in-possession;

(2) when used with reference to an institution or a body corporate, the manager of such institution or body corporate;

(q) "prescribed" means prescribed by rules made under this Act

(r) "railway administration" has the same meaning as in the Indian Railways Act, 1890 (Central Act 9 of 1890);

(s) "vehicle" includes a barrow, sledge, plough, drag and a wheeled conveyance of any description capable of being used on a highway

(t) the expressions "land", "person interested" and "persons entitled to act" used in this Act shall have the same meaning as the said expressions have in the Kerala Land Acquisition Act, 1961 (21 of 1962).

CHAPTER II

Declaration of Highways, Highway Authorities and their powers and functions

3. *Declaration of roads, ways or lands as highways.*—The Government may, by notification in the Gazette, declare any road, way or land to be a highway and classify it as—

(i) a State highway;

(ii) a major district road;

(iii) other district road; or

(iv) a village road.

4. *Appointment of Highway Authorities.*—The Government may, by notification in the Gazette, appoint for the purpose of this Act or for any of its provisions any person or any authority to be a Highway Authority for all the highways in the State or, in parts of the State, or for any highway in the State, specified in the notification.

5. *Powers and duties of Highway Authorities.*—Subject to such conditions as may be specified in the notification appointing a Highway Authority and subject to the general or special orders which the Government may make in this behalf, a Highway Authority shall exercise powers and discharge duties in accordance with the provisions of this Act for the restriction of ribbon development along highways, for the prevention and removal of encroachments and for all matters necessary and incidental to any or all of the above subjects. It shall be lawful to a Highway Authority to undertake any construction, maintenance, development or improvement of highways subject to the approval of the Government and to such general or special orders which the Government may make in this behalf.

6. *Officers and servants of Highway Authority.*—For the purpose of enabling a Highway Authority to exercise the powers conferred and to discharge the duties imposed upon it by or under the provisions of this Act, the Government may appoint such officers and servants as they deem necessary or expedient to work under such Authority.

CHAPTER III

Restriction of Ribbon Development

7. *Power to fix boundary, building and control lines of Highways.*—(1) In any area in which the provisions of this Act have been brought into force, and,

(i) where any road, way or land has been declared to be a highway under section 3, or

(ii) where the construction or development of a highway is undertaken, the Government may, by notification in the Gazette, fix, as respects such highway, the highway boundary, the building line and the control line:

Provided that having regard to the situation or the requirements of a highway or the condition of the local area through which a highway passes, it shall be lawful for the Government—

(i) to fix different buildings or control lines,
or

(ii) not to fix building or control lines, in respect of any highway or portions thereof.

(2) Not less than sixty days before issuing a notification under sub-section (1) the Government shall cause to be published in the Gazette and in the prescribed manner in the village and at the headquarters of the taluk in which the highway is situate, a notification stating that they propose to issue a notification in terms of sub-section (1), and specifying therein all the lands situated between the highway boundary and the control lines proposed to be fixed under such notification and in the case of new works, also land benefiting by the construction or development of the highway, as the case may be, together with a notice requiring all persons affected by such notification, who wish to make any objections or suggestions with respect to the issue of such a notification, to submit their objections or suggestions in writing to the Highway Authority or to appear before such authority, within two months of the publication of the notification in the Gazette or within one month from the date of the publication of the notification in the village, whichever period expires later.

(3) The Highway Authority shall, after all such objections or suggestions have been considered or heard, as the case may be, and after such further inquiry, if any, as it thinks necessary or expedient, forward to the Government, a copy of the record of its proceedings held by it together with a report setting forth its recommendations on the objections or suggestions.

(4) If, before the expiration of the time allowed by sub-section (2) for the filing or hearing of objections or suggestions, no objection or suggestion has been made, the Government shall proceed at once to issue the notification under sub-section (1). If any such objection or suggestion has been made, the Government shall consider the record and the report referred in sub-section (3) and may either—

(a) abandon the proposal to issue the notification under sub-section (1), or

(b) issue the notification under sub-section (1) with such modifications, if any, as they think fit.

(5) In considering the objections or suggestions the decision of the Government on the question of issuing the notification under sub-section (1) shall be final and conclusive.

8. *Map to be prepared and maintained.*—Within two months from the date of publication of the notification under sub-section (1) of section 7 fixing the highway boundary, building line and control line with respect to any highway, the Highway Authority shall cause a map to be made of the area through which such highway passes and shall cause to be marked thereon the highway boundaries and building and control lines and any other particulars necessary for the purposes of this Act and within one month from the date of making any alteration or addition thereto cause the said map to be corrected and such map with the date indicated thereon of the last time when the same shall have been so corrected shall be kept in the office of the Highway Authority. Such map, which shall bear the seal of the Highway Authority, shall be open to inspection and copies of such map shall be kept for inspection at such other place/places as may be prescribed.

9. *Restrictions on buildings between highway boundary and building line and between building and control lines.*—(1) Notwithstanding anything contained in any law, custom, agreement or instrument for the time being in force, on or after the appointed day the following restrictions shall, subject to the provisions of this Act, be in force, that is to say,—

no person shall, without the previous permission in writing of the Highway Authority,—

(a) upon any land lying between the highway boundary and the building line proposed to be fixed under sub-section (2), or fixed under sub-section (1), of section 7, as the case may be,

(i) construct, form or lay out any means of access to, or from, a highway, or

(ii) erect any building, or

(iii) materially alter any existing building, or

(iv) make or extend any excavation, or

(v) construct, form or lay out any work; or

(b) upon any land lying between the building line and the control line proposed to be fixed under sub-section (2), or fixed under sub-section (1), of section 7, as the case may be,

(i) construct, form or lay out any means of access to, or from, a highway, or

(ii) erect any building, or

(iii) materially alter any existing building;

(c) use any building or alter the use of any building already erected in a manner which in the opinion of the Highway Authority will, in any manner whatsoever, infringe any of the provisions of this Act or interfere with the use of a highway adjoining the land on which such building is erected.

(2) Every person desiring to obtain such permission under sub-section(1) shall make an application in writing to the Highway Authority in such form and containing such information as may be prescribed in respect of the building, alteration, excavation, works or means of access, as the case may be, to which the application relates.

(3) On receipt of such application, the Highway Authority, after making such enquiries as it may consider necessary, shall, by order in writing, either—

(a) grant the permission, subject to such conditions, if any, as may be specified in the order, or

(b) refuse to grant such permission:

Provided that—

(i) permission under clause (a) of sub-section (1) to the making of any excavation or construction, formation or laying out of works in land for

the purpose of repairing, renewing, enlarging or maintaining any underground sewer, drain, electric line, pipe, duct or other apparatus shall not be withheld nor be made subject to any conditions save such as may be necessary for securing that the sewer, drain, electric line, pipe, duct or other apparatus shall be laid in such manner and at such levels that the construction, maintenance, development or improvement of a road thereover will not be prevented or prejudically affected thereby;

(ii) permission under clause (b) of sub-section (1) to the erection or alteration of a building or laying out any means of access to a highway which conforms to the requirements of public health, and welfare and of safety and convenience of traffic on the adjoining road shall neither be withheld nor made subject to unreasonable conditions:

Provided that in the case of means of access required for agricultural purposes such permission shall neither be withheld nor be made subject to any conditions save such as may be necessary for securing that the means of access shall be used for agricultural purposes only;

(iii) permission under clause (b) of sub-section (1) to the re-erection or alteration of a building which was in existence before the appointed day shall neither be withheld nor made subject to restrictions unless such re-erection or alteration involves any material alteration to the outside appearance of the building.

(4) When the Highway Authority refuses permission, the reasons therefor shall be recorded in writing and communicated to the applicant:

Provided that nothing herein contained shall debar a person from making a fresh application after omitting therefrom the objectionable features communicated to him as aforesaid on account of which such permission was refused.

(5) If at the expiration of a period of three months after an application for such permission specifying the name and address of the applicant has been made to the Highway Authority, or such further period not exceeding three months as may have been notified by the Highway Authority has elapsed and no decision has been notified in writing, posted or delivered to the applicant at that address, then (except as may otherwise be agreed in writing between the Highway Authority and the applicant) permission shall be deemed to have been given without the imposition by the Highway Authority of any conditions.

(6) The Highway Authority shall maintain a register with sufficient particulars of all permission given or refused by it under this section and the Register shall be available for inspection free of charge by all persons interested and such persons shall be entitled to take extracts therefrom.

Explanation.—For the purpose of this section, the "appointed day", shall, with reference to any highway boundary, building line or control line, mean—

(i) the day on which a notification is published in the Gazette under sub-section (2) of section 7 proposing to fix such highway boundary, building line or control line, and

(ii) if any modification is made in such highway boundary, building line or control line, the day on which the notification is published under sub-section (1) of section 7 fixing such highway boundary, building line or control line.

10. *Appeal.*—(1) Any applicant aggrieved by any decision of the Highway Authority under section 9, due to withholding of permission, or imposing any condition, he may appeal to the Government within thirty days from the date on which such decision was communicated to him.

(2) The Government may, after giving the applicant an opportunity of being heard, make such order as they think fit upon the appeal and the decision of the Government shall be final.

11. *Exemptions for works in progress, etc.*—(1) No restrictions in force under section 9 shall apply to the erection or making of a building or excavation or to the construction, formation or laying out, of any means of access or works begun before the appointed day referred to in section 9.

(2) No restrictions in force under section 9, except restrictions as to the construction, formation or laying out, of means of access, shall apply to any land forming part of a burial or cremation ground or other place for the disposal of the dead being land which has, before the passing of this Act, been used for such purpose.

(3) No restrictions in force under section 9 shall apply to any excavation or works necessary in connection with any drains, ditches, or other drainage works for agricultural purposes or to any works necessary for the repair, renewal, enlargement or maintenance of any sewer, drain, electric line, pipe, duct, or other apparatus, constructed in or upon the land before the date on which the restrictions came into force or with the consent of the Highway Authority on or after that date.

12. *Setting back of buildings to building line or control line.*—Whenever any building or any part thereof erected before the appointed day referred to in section 9 lies between the building line and the middle of the highway the Highway Authority may, whenever any such building or part has either entirely or in greater part been taken down, burnt down or fallen down, by notice require such building or part when re-erected to be set back to the building line or control line.

13. *Regulation or diversion of right of access to highway.*—(1) The Highway Authority may, if it is considered essential in the interests of safety or convenience of traffic, regulate or divert any existing right of access to a highway across land lying between the control line and the highway boundary:

Provided that the existing right of access shall not be diverted until alternative access has been given.

(2) When the existing right of access is diverted, the point at which alternative access is given to the highway shall not be unreasonably distant from the existing point of access.

(3) The Highway Authority shall by notification in the Gazette, publish the date on which the existing right of access has been diverted and alternative access has been given.

14. *Powers of Highway Authority and officers and servants appointed under section* 6 *in respect of surveys.*—For the purpose of carrying out any of the provisions of this Act, the Highway Authority and the officers and servants appointed under section 6 may—

(a) enter upon, survey and take measurements and levels of any land;

(b) mark such levels, dig or bore into the subsoil of any land;

(c) demarcate the boundaries of the highway by planting stones or other suitable marks in different colours of a durable nature at intervals all along the highway in such a manner that the imaginary line joining such stones or marks shows the road boundary correctly;

(d) where there are bends or kinks on the road boundary, locate the stones or marks in different colours so as to give the correct configuration of the boundary if they are joined by straight lines;

(e) give consecutive numbers to such boundary stones or marks and maintain them on the ground as if they constituted part of the highway;

(f) lay out the building and control lines by placing marks in different colours and cutting trenches;

(g) if the survey cannot otherwise be made, or measurements or levels taken or boundaries marked and lines laid out, cut down and clear away any standing crop, tree, fence or jungle or any part thereof;

(h) do all other acts necessary in that behalf:

Provided that the Highway Authority shall not, except with the consent of the occupier thereof, enter or permit any of the officers or servants to enter any premises without previously giving such occupier at least forty-eight hours' notice in writing of its intention to do so.

15. *Acquisition of land or right or interest in land.*—If at any time on the application of the Highway Authority, the Government are satisfied that any land required for the purpose of a highway or any right or interest of any person in any land required for the said purposes should be compulsorily acquired or extinguished, as the case may be, it shall be lawful for the Government to publish a notification to that effect in the Gazette. Such notification shall also be published in such other manner as may be prescribed. A notification so published shall be deemed to be a declaration that the land is needed, or, as the case may be, the right or interest is required to be extinguished for the purpose of the highway; and such declaration shall be conclusive evidence that the land is so needed or the right or interest is so required to be extinguished.

16. *Land required to be marked and measured.*—The Highway Authority or any officer or servant authorised by the Highway Authority shall thereupon

cause the land to be marked out. It shall also cause it to be measured and if no plan is made thereof, a plan to be made of the same.

17. *Public notice and other notices of such requirement for acquisition.*—(1) The Highway Authority shall then cause a public notice to be given at convenient places on or near such land stating that the Government intend to take possession of the land, or, as the case may be, to extinguish any right or interest in the land and that claims for all interest in such land, or any right or interest in land to be extinguished may be made to such officer as the Highway Authority may designate.

(2) Such notice shall state the particulars of the land so needed or right or interest in land to be extinguished and shall require all persons interested in the land or in the right or interest to be extinguished to appear personally or by agent before such officer as may be designated, at the time therein mentioned (such time not being earlier than fifteen days after the date of the publication of the notice) and to state the nature of their respective right or interest in the land, or, as the case may be, in the right or interest to be extinguished and the amount and the particulars of their claims for such right or interest or both and their objections, if any, to the measurements made under section 16. The Highway Authority may, in any case, require such statement to be made in writing and signed by the party or his authorised agent.

(3) The Highway Authority shall also serve notice to the same effect on the occupier of such land and on all such persons known or believed to be interested therein or to be entitled to act for persons so interested, as reside or have agents authorised to receive service on their behalf, within the district in which the land is situate.

(4) In case any person so interested resides elsewhere, a notice shall be served in the manner provided in section 70.

18. *Persons required to make statements regarding other persons having interest.*—(1) The Highway Authority or the officer authorised by it may also require any such person to make or deliver to it or him at a time not being earlier than fifteen days after the date of the requisition a statement containing, as far as may be practicable, the name of every other person possessing any interest in the land or in any part thereof, or, as the case may be, in any right or interest in land to be extinguished as co-proprietor, mortgagee, tenant or otherwise, and of the nature of such interest, and of the rents and profits, if any received or receivable on account thereof in respect of the three years next preceding the date of such statement.

(2) Every person required to make or deliver a statement under this section or under section 17 shall be deemed to be legally bound to do so within the meaning of sections 175 and 176 of the Indian Penal Code.

19. *Taking possession of land.*—(1) At any time after the publication of a notification under section 15, the Government may direct that the land specified in the notification shall be taken possession of, or, as the case may be, the right or interest specified therein shall be extinguished, from such date as

may be specified in the directions and from such date the said land shall vest absolutely in the Government free from all encumbrance, or, as the case may be, such right or interest therein shall be extinguished.

(2) In every case under sub-section (1), the Highway Authority or an officer authorised by the Government in this behalf may, on request in writing by all the parties interested and on furnishing sufficient security, after such summary inquiry as it or he may think fit to institute and after satisfying itself or himself that the parties are lawfully entitled to receive the amount, pay a sum not exceeding fifty per cent of the amount that may be finally awarded in respect of such acquisition or extinguishment, provided that no payment shall be made where there is a dispute as regards the persons entitled to the amount.

(3) The advance amount paid under sub-section (2) shall be adjusted towards the final amount payable under the award.

CHAPTER IV

Prevention of unauthorised occupation of, and encroachment on, a highway and removal of encroachment

20. *Lands forming part of highway deemed to be Government property.*—All lands forming part of a highway which do not already vest in the Government shall, for the purpose of this Chapter, be deemed to be the property of the Government.

21. *Prevention of unauthorised occupation of highway.*—(1) No person shall occupy or encroach on any highway within the highway boundaries without obtaining the previous permission in writing of the Highway Authority or an officer authorised in this behalf by the Highway Authority.

(2) The Highway Authority or an officer authorised by the Highway Authority in this behalf may, with due regard to the safety and convenience of traffic and subject to such conditions as may be prescribed by the Government, and on payment of such rent or other charges as may be prescribed under such rules, permit any person,—

(i) to place a temporary encroachment on any highway in front of any building owned by him or make a temporary structure overhanging the highway, or

(ii) to put up a temporary awning or tent, pandal or other similar erection or a temporary stall or scaffolding on any highway, or

(iii) to deposit or cause to be deposited building materials, goods for sale or other articles on any highway, or

(iv) to make a temporary excavation for carrying out any repairs or improvements to adjoining buildings:

Provided that no such permission shall be deemed to valid beyond a period of one year unless expressly renewed by the Highway Authority or the authorised officer.

(3) The permission so granted shall clearly specify the date up to which the person is authorised to occupy the highway, the purposes for which occupation is authorised and the exact portion of the highway permitted to be occupied, and shall also be accompanied by a plan or sketch of that portion of the highway, if necessary.

(4) The person in whose favour such a permission has been given shall produce the permit for inspection whenever called upon to do so by the Highway Authority or any officer by a general or special order empowered in that behalf and shall at the end of the period specified in the permit release the land occupied by him after restoring it to the same state as before the occupation by him.

(5) The Highway Authority or the officer issuing the permission shall maintain a complete record of all such permissions issued, and shall also cause a check-up to be made in every case at the expiration of the period up to which occupation has been authorised to ensure that the land has actually been vacated.

22. *Power to cancel permit.*—(1) The Highway Authority may concel any permission granted under section 21—

(a) if any rent or charge is not duly paid; or

(b) if the purpose for which the permission was given has ceased to exist; or

(c) in the event of any breach by the holder of such permission or of any terms or conditions of such permission; or

(d) if the land on which such encroachment has been made is required for any public purpose or such encroachment is causing impediment or danger to traffic.

(2) Where the permission has been cancelled under clause (b) or clause (d) of sub-section (1), any rent or charge paid in advance shall be refunded to the holder of such permission less the amount, if any, due to the Government.

23. *Prevention of encroachment.*—(1) When as a result of check of highway boundaries made or otherwise, it transpires that an encroachment has taken place on a highway, the Highway Authority or the officer authorised under sub-section (1) of section 21 shall serve a notice on the person responsible for the encroachment or his representative requiring him to remove such encroachment and restore the land to its original condition before the encroachment within the period specified in the notice.

(2) The notice shall specify the land encroached upon and the time-limit within which such encroachment shall be removed and shall also state

that failure to comply within the specified period shall render the person liable to prosecution and also to summary eviction.

(3) If the encroachment is not removed within the time-limit specified in the notice and no valid cause is shown for non-compliance, the Highway Authority or the authorised officer referred to in sub-section (1) may prosecute such person before the appropriate Magistrate for his having made or caused the encroachment and for his failure to remove it within the specified time.

(4) Where the encroachment is made for the purpose of exposing articles for sale, opening temporary booths for vending or other like purpose of a trivial nature, the Highway Authority or the authorised officer referred to in sub-section (1) may, with the help of the police, if necessary, have such encroachment summarily removed without issuing a notice as required by sub-section (1), or in lieu of removal of the encroachment, may give the person responsible for the encroachment option of executing a lease in favour of the Highway Authority on payment of rent for the area encroached upon

(5) When the encroachment is of a temporary nature and can easily be removed but is not such as can be described as trivial within the meaning of sub-section (4), the Highway Authority or the authorised officer referred to in sub-section (1) may in addition to or in lieu of prosecuting the person responsible for the encroachment under sub-section (3) have the encroachment summarily removed with the assistance of the police, if necessary.

(6) Where the encroachment is of such a nature that its immediate removal is considered essential in the interests of safety of traffic on the highway or the safety of any structure forming part of the highway, the Highway Authority or the authorised officer referred to in sub-section (1) may, in addition to prosecution of the person under sub-section (3), either—

(i) have such protective work, as may be feasible at a reasonable cost, carried out so as to minimise the danger to traffic on the highway, or

(ii) have the encroachment removed with the help of the police, if necessary.

24. *Appeal against notice served under sub-section* (1) *of section* 23.—Where the person on whom notice to remove an encroachment has been served under sub-section (1) of section 23 lays claim that the land in respect of which encroachment has been alleged is his property or that he has acquired a right over it by virtue of adverse possession or otherwise he shall within the time-limit prescribed in the notice for the removal of the encroachment, file an appeal before the Collector under intimation to the Highway Authority or the officer authorised under sub-section (1) of section 21, as the case may be. The Collector shall after due enquiry record his decision in writing and communicate the same to the appellant and the Highway Authority or such officer. The Highway Authority or such officer shall till then desist from taking further action in the matter.

25. *Recovery of cost of removal of encroachment.*—(1) Whenever the Highway Authority or the officer authorised under sub-section (1) of section 21 has under the provisions of section 23 removed an encroachment or carried out any protective work in respect of any encroachment, the expenditure involved shall be recovered from the person responsible for the encroachment in the manner hereinafter provided.

(2) A bill, representing the expenditure incurred shall be served by the Highway Authority or the authorised officer referred to in sub-section (1) on the person responsible for the encroachment or his representative with a direction to pay up the amount within a specified period to the authority mentioned in the bill.

(3) The bill shall be accompanied by a certificate from the Highway Authority or the authorised officer referred to in sub-section (1) to the effect that the amount of expenditure indicated in the bill represent the charges incurred and such a certificate shall be conclusive evidence that the charges had actually been incurred.

(4) The materials, if any, recovered as a result of the removal of any encroachment shall be handed over to the person responsible for the encroachment on payment of the amount of the bill by him but in the event of his failure to pay up the amount within the specified period, the materials may be auctioned and after deducting the amount of the bill from the proceeds, the balance, if any, shall be made over to such person.

(5) If the proceeds of the auction sale do not cover the total amount billed for, the excess over the amount realised by the sale of materials, or if there are no materials to dispose of and the billed amount has not been paid by the person responsible for the encroachment within the specified period, the entire amount of the bill shall be recovered from such person as an arrear of land revenue.

CHAPTER V

Compensation

26. *Doing minimum damage in certain cases and compensation.*—In the exercise of the powers under the following provisions by the Highway Authority or any officer or servant appointed under section 6 or any other person authorised by or under this Act by the Government, as little damage as can be, shall be done and compensation in the manner prescribed by or under this Act shall be paid to any person who sustains damage in consequence of the exercise of such powers, namely:—

(a) the imposition of restrictions under section 9;

(b) the setting back of any building or part thereof under section 12;

(c) the regulation or diversion of any right of access to a highway under section 13;

(d) the entry, survey, measurement and doing of any of the acts on any land under section 14;

(e) the acquisition of any land or the extinguishment of any right or interest in the land under section 15;

(f) the closure of any highway or part thereof under section 52;

(g) compensation for refusal of permission to build.

27. *Determination of amount by agreement.*—(1) The amount of compensation payable under section 26, the persons to whom it is to be paid and the apportionment of such amount among the persons interested therein may be determined by agreement between the Highway Authority or any officer authorised by the Government and the person or persons claiming interest therein.

(2) Where there is an agreement under sub-section (1), the Highway Authority or the officer authorised by the Government, as the case may be, shall make an award accordingly.

28. *Determination of amount in default of agreement.*—(1) In default of any agreement under section 27, the Highway Authority or the officer authorised by the Government shall, subject to the provisions of this Act, after holding an enquiry, make an award determining—

(a) the true area of the land, if any, acquired,

(b) the amount of compensation to be paid under section 26,

(c) the apportionment, if any, of such compensation among all persons known or believed to be entitled thereto.

(2) In determining the amount of compensation the matters specified in sections 25 and 26 of the Kerala Land Acquisition Act, 1961 (21 of 1962) shall be taken into consideration.

29. *No compensation if similar restrictions in force under any other law or if compensation already received.*—No compensation shall be awarded—

(i) if and in so far as the land is subject to substantially similar restrictions in force under some other law which was in force on the date on which the restrictions were imposed by this Act;

(ii) if compensation in respect of the same restrictions imposed under this Act or substantially similar restrictions in force under any other law has already been paid in respect of the land to the claimant or to any predecessor in interest of the claimant.

30. *Compensation for refusal of permission to build not to exceed difference between its value when it was refused and when it would have been granted.*—When permission to erect any building has been refused under section 9 or section 10, the amount of compensation shall not exceed the difference between the

value of the land as determined by sections 25 and 26 of the Kerala Land Acquisition Act, 1961 (21 of 1962) and the value which it would have had if the permission had been granted. In determining such value any restrictions to which the land is subject under any other law for the time being in force in regard to the right of person claiming compensation to erect a building on the land or otherwise to use, hold or dispose of the same shall be taken into consideration.

31. *Compensation for diversion of access not to exceed cost of alternative access.*—Where the right of access to a highway has been destroyed as a result of the diversion or closure thereof and an alternative access had been given, the amount of compensation shall in no case exceed the cost of laying a new means of access from the property of the claimant to such alternative route.

32. *Compensation for cutting of a standing crops, trees etc.*—(1) At the time of an entry, survey or measurement or doing of any of the things under section 14, the officer making the entry, survey or measurement or doing any other thing shall pay or tender to any person entitled to compensation for all necessary damage done as a result of such entry, survey, measurement or execution of the work, including the cutting of standing crops, trees, or removal of temporary structures, if any, on the land. If the sufficiency of the amount so paid or tendered is disputed, the officer concerned shall at once refer the dispute to the Highway Authority and the said Authority shall with the least practicable delay decide the dispute and pay to the person entitled to the amount determined as compensation. The decision of the Highway Authority shall be final.

(2) If at the time of taking possession of the land under section 19 there are any standing crops, trees or temporary structures on the land, the Highway Authority shall pay or tender to the person entitled to get the amount for such standing crops, trees or temporary structures. If the sufficiency of such amount is disputed, the value of such crops, trees and temporary structures shall be taken into consideration in determining the amount payable under section 28.

33. *No Compensation for unauthorised erection.*—If any person has unauthorisedly erected, re-erected, added or altered any building on any land which is acquired for the purpose of a highway, then any increase in the value of the land from such erection, re-erection, addition or alteration shall not be taken into account in estimating the value of the land.

34. *No compensation for removal of encroachment.*—No compensation shall be payable for the removal of any encroachment.

35. *Reference against award of Highway Authority or authorised officer under section 28.*—(1) Any person aggrieved by the award of the Highway Authority or the Officer authorised under section 28 may, by a written application to the Highway Authority or such Officer, require that the matter

be referred to the Subordinate Judge's Court, of the district within the limits of whose jurisdiction such land is situate.

(2) Any such application shall be made within six weeks from the date of the award, and shall be in such form as may be prescribed.

(3) The provisions of sections 5, 12 and 14 of the Limitation Act, 1963 (36 of 1963), shall apply to the computation of the time fixed for reference under sub-section (2).

(4) The Highway Authority or the officer authorised shall make the reference in such manner as may be prescribed.

36. *Procedure and powers of the authorities empowered to decide references under sections* 35 *and* 44.—(1) References under sections 35 and 44 shall be deemed to be proceedings within the meaning of section 141 of the Code of Civil Procedure, 1908 (V of 1908) and in the trial thereof the authorities empowered to decide such references may exercise all the powers of the civil court under that Code.

(2) The scope of the enquiry in a reference under section 35 or 44 shall be restricted to a consideration of the matters referred to the authorities mentioned in sub-section (1) in accordance with the provisions of this Act.

37. *District Superintendent of Police to enforce surrender or remove any encroachment.*—If the Highway Authority or any officer or servant is opposed or impeded in taking possession of any land or in executing any work or in removing any encroachment under this Act, the Highway Authority or officer or servant concerned shall apply to the District Superintendent of Police or such Police Officer as the Government may empower in this behalf, and the District Superintendent or the officer so empowered shall enforce the surrender, removal or execution, as the case may be.

38. *Decisions of authorities under sections* 35 *and* 44 *to be enforced as decrees of civil court.*—The decisions of authorities empowered to decide references under sections 35 and 44 shall be enforceable as a decree of a civil court.

39. *Payment of compensation awarded.*—(1) On the determination of compensation by agreement under section 27, or

(2) on the making of an award under section 28, or

(3) if a reference is made under section 35 against such award, after the decision of the Authority under that section,

the Highway Authority shall make the payment of the amount awarded to the person entitled thereto in accordance with the agreement, its award or the decision of the Authority empowered to decide references under section 35, as the case may be. The provisions of the Kerala Land Acquisition Act, 1961 (21 of 1962), shall, *mutatis mutandis*, apply to such payment.

40. *Payment by adjustment.*—All payments due to be made to any person by the Highway Authority under this Act shall, as far as possible, be made by adjustment in such person's account regarding betterment charges, if any, due from such person under Chapter VI.

CHAPTER VI

Levy of Betterment Charges

41. *Notice to owners and persons interested.*—Where any work which the Highway Authority is empowered to undertake by or under the provisions of this Act is undertaken, the officer authorised by the Government in this behalf shall give notice to the persons known or believed to be the owners of or interested in the lands benefited by such work requiring them to appear before him either personally or by an authorised agent at the time and place therein mentioned (such time not being earlier than 30 days from the date of notice) to state their objections, if any, to the imposition and recovery of betterment charges on such lands:

Provided that no such notice shall be given unless the Collector with the previous sanction of the Government has declared that the value of such lands is likely to increase or has increased by reason of the construction of such work.

42. *Inquiry and order.*—On the date fixed under section 41 or on such other date to which the inquiry may be adjourned, the officer authorised under section 41 shall, after holding a formal inquiry and after hearing the objections, if any, stated by the persons as required by notice under section 41, make an order. The order shall specify,—

(a) the lands benefited by the construction of the work;

(b) the increase in the value of such lands by the proposed construction;

(c) the amount of the betterment charges leviable on each of the said lands;

(d) the date from which such betterment charges shall be leviable:

Provided that no betterment charges shall be leviable in respect of any land—

(a) which is unsuitable for development as a building site, or

(b) which is situate beyond a distance of 0.2 kilometre from the middle of the highway on either side.

43. *Increase in value and betterment charges.*—The increase in value on account of the construction of such work shall be the amount by which the value of the land on the date of the completion of the proposed work is likely to exceed or has exceeded the value of the land on the date of the commencement of the said work and the betterment charges shall be one-half of such increase in value.

Explanation.—For the purposes of this section, the Government shall, by notification in the Gazette, specify—

(a) the date of commencement of the construction of any work, and

(b) the date of completion of such work.

44. *Reference against order of authorised officer under section* 42.— (1) Any person aggrieved by the order fixing the betterment charges may, by a written application by the officer authorised under section 41, require that the matter be referred to the Subordinate Judge's Court of the district within the limits of whose jurisdiction the land is situate.

(2) Any such application shall be made within six weeks from the date on which the order of the officer referred to in sub-section (1) was communicated to such person and shall be in such form as may be prescribed.

(3) The provisions of sections 5, 12 and 14 of the Limitation Act, 1963 (36 of 1963) shall apply to the computation of the time fixed for reference under sub-section (2).

(4) The Officer authorised under section 41 shall make the reference in such manner as may be prescribed.

45. *Finality of order fixing betterment charge and of decision on references.*—The order fixing the betterment charges made under section 42, subject to a reference to the Authority under section 44 and the decision of the Authority on reference under section 44 shall be final.

46. *Betterment charges to be first charge on land next to land revenue.*—From the date specified in the order fixing the betterment charges as the date from which such charges shall be leviable, or from such date as may be otherwise specified by the Authority under section 44, as the date from which such charges shall be leviable, the betterment charges recoverable in respect of any land shall, subject to the prior payment of the land revenue, if any, due to the Government thereon, be a first charge on the land in respect of which such betterment charges are leviable.

47. *Payment of betterment charges.*—The betterment charges shall be payable on the date fixed under the rules made by the Government under section 71:

Provided that the owner of the land on which such charges are imposed may execute an agreement in favour of the Government agreeing to pay the amount of such charges by annual instalments together with interest at such rate and within such period as may be prescribed.

48. *Relinquishment of or exchange of land in lieu of payment of betterment charges.*—Notwithstanding anything contained in section 47, the Government may allow the owner of the land on which the betterment charges may be

payable to relinquish the whole or any part of the land or to deliver it in exchange in lieu of payment of the charges, in favour of the Government on such conditions as may be prescribed:

Provided that no such relinquishment or exchange shall be permitted unless the land is free from all encumbrances.

CHAPTER VII

Supplemental provisions to secure safety of traffic and prevention of damage to highways

49. *Prevention of obstruction of view of persons using any highway.*—(1) Whenever the Highway Authority is of opinion that it is necessary for the prevention of danger arising from obstruction of the view of persons using any highway, especially at any bendor corner of the highway, it may, save as otherwise provided in section 11, serve a notice upon the owner or occupier of land alongside or at the bend or corner of such highway to alter within such time and in such manner as may be specified in the notice, the height or character of any existing wall (not being a wall forming part of a permanent structure), fence, hedge, tree, advertisement post, bill board or any other object thereon, so as to cause it to conform with any requirements specified in the notice.

(2) If any person upon whom a notice has been served under sub-section (1) objects to comply with any requirement of such notice, he may, within one month of its receipt, send to the Highway Authority his objection in writing stating the grounds thereof.

(3) The Highway Authority shall, within one month of the receipt of the objection, consider the grounds advanced and shall, by order in writing either withdraw the notice or amend or confirm it.

(4) Any person aggrieved by an order issued by the Highway Authority under sub-section (3), may prefer an appeal within 15 days from the date when such order was communicated to him, to the Collector whose decision in the matter shall be final.

(5) If any person fails to comply with the notice served on him under sub-section (1) as amended or confirmed, as the case may be, under sub-section (3), the Highway Authority may take action to alter the object causing obstruction of view at its own expense, and such expenditure shall be recovered from such person in accordance with the provisions of section 25, without prejudice to any other action which may be taken against him.

50. *Highway Authority to regulate traffic when Highway declared unsafe.*—If at any time it appears to the Highway Authority that any highway in its charge or any portion thereof is or has been rendered unsafe for vehicular

or pedestrain traffic by reason of damage or otherwise, it may, subject to such rules as may be prescribed in this behalf, either close the highway or the portion of it to all traffic or to any class of traffic, or regulate the number and speed or weight of vehicles using the highway.

51. *Prohibition of use of heavy vehicles on certain highways.*—Where the Highway Authority is satisfied that any highway or a portion thereof, or any bridge, culvert or causeway built on or across any highway, is not designed to carry vehicles of which, the laden weight exceeds such limit, as may be fixed in this behalf, it may, subject to such rules as may be prescribed in that behalf, prohibit or restrict the plying of such vehicles on or over such highway or such part of the highway or such bridge, culvert or causeway.

52. *Procedure to be followed when Highway Authority desires permanently to close any highway.*—(1) Where in exercise of the powers conferred on it by section 50 the Highway Authority desires permanently to close down any highway or part thereof, it shall give notice of its intention so to do in the Gazette. The notification shall also be published in at least two newspapers, one of which shall be in the regional language of the place in which the highway is situated.

(2) The notice shall indicate the alternative route, if any, which is proposed to be provided or which may already be in existence, and shall also invite objections, if any, to the proposal to be submitted within such time as may be specified.

(3) The Highway Authority shall finalise its proposal to close down any highway or part of it after considering the objections, if any, received within the specified time and shall submit the final proposal to the Government for approval together with such objections as may have been received against the proposal.

(4) The Government may either approve the proposal, with or without modifications, or reject it.

(5) When the Government have approved the proposal they shall publish their orders in the Gazette.

(6) When the orders of the Government have been published in the Gazette, the Highway Authority shall arrange for further publicity to be given to the orders in at least two newspapers one of which shall be in the regional language of the place in which such highway is situate and the highway or part thereof shall then be closed.

(7) Whenever any highway or any part thereof has been so closed, reasonable compensation shall be paid to every person who was entitled, otherwise than as a mere member of the public to use such highway or part thereof as a means of access to or from his property and has suffered damage for such closure.

53. *Consent of the Highway Authority required to do certain acts an highway.*—(1) Notwithstanding anything contained in any other enactments for the time being in force but subject to the provisions of section 72, no person other than the Highway Authority or any person authorised by it shall construct or carry any cable, wire, pipe drain, sewer or channel of any kind through, across, under or over any highway, except with the permission in writing of the Highway Authority.

(2) In giving its consent the Highway Authority may impose such conditions as it may deem to be necessary, and may also impose a rent or other charge for any land forming part of the Highway occupied by or applied to the proposed work.

(3) If any person constructs or carries out any work in contravention of sub-section (1), the Highway Authority may arrange for the removal of such work and restoration of the highway to its former condition in accordance with the provisions of section 23 as if the work constituted an encroachment on the highway, and such expenses as the Highway Authority may incur for this purpose, shall, without prejudice to any other action that may be taken against such person, be recovered from him in accordance with the procedure provided in section 25 in so far as that procedure is applicable.

54. *Prevention and rectification of damaged highway.*—(1) No person shall wilfully cause, or allow any vehicle or animal in his charge to cause any damage to any highway.

(2) Where in contravention of sub-section (1) any damage has been caused to any highway, the Highway Authority shall have the damage repaired and the expenses involved shall, without prejudice to any other action that may be taken against the person responsible for the contravention of sub-section (1), be recovered from him in accordance with the procedure provided in section 25 in so far as that procedure is applicable.

CHAPTER VIII

Penalties

55. *Disobedience of orders, instructions and refusal to give information etc.*—Whoever wilfully disobeys any direction lawfully given by any person or authority empowered under this Act to give such direction, or obstructs any person or authority in the discharge of any function that such person or authority is required or empowered under this Act to discharge or, being required by or under this Act to supply any information, withholds such information or gives information which he knows to be false or which he does not believe to be true shall, on conviction, be punished with fine which may extent to two hundred rupees.

56. *Contraventions of restriction relating to access or erecting any building etc.*—Whoever erects, alters or extends any building, or makes any excavation, or constructs any means of access to or from a highway or does any other work in contravention of the provisions of section 9, shall, on conviction, be punished—

(a) with fine which may extend to five hundred rupees, and

(b) with further fine which may extend to one hundred rupees for each day after such conviction during which the offending structure or work is not removed, demolished or cleared and the site not restored to its original condition.

57. *Unauthorised occupation of highway.*—Whoever—

(a) occupies or makes any encroachment on any highway in contravention of the provisions of sub-section (1) of section 21, or

(b) fails to comply with the notice served on him under sub-section (1) of section 23 for no valid reason,
shall, on conviction, be punished—

(a) for a first offence with fine which may extend to two hundred and fifty rupees,

(b) for a subsequent offence in relation to the same encroachment with fine which may extend to five hundred rupees plus a further fine not exceeding fifty rupees per day on which such occupation of the highway or encroachment continues.

58. *Causing damage to highways.*—Whoever in contravention of sub-section (1) of section 54 wilfully causes or allows any vehicle or animal in his charge to cause any damage to any highway, shall, on conviction, be punished with fine which may extend to one thousand rupees.

59. *General provision for punishment of offences.*—Whoever contravenes any provision of this Act or of any rules or order made thereunder shall, if no other penalty is provided for the offence, on conviction, be punished—

(a) for a first offence with fine which may extend to fifty rupees,

(b) for a subsequent offence with fine which may extend to two hundred rupees.

60. *Power to compound offences.*—Any offences committed under this Act may be compounded by the Highway Authority and if any proceedings have been instituted against any person in any criminal court, then on the terms of the compromise being carried out, the composition shall be held to amount to an acquittal and in no case shall any further proceedings be taken against such person or any property of such person with reference to the same facts.

CHAPTER IX

Miscellaneous

61. *Powers and duties of police.*—Every police officer shall forthwith furnish information to the nearest Highway Authority, or the nearest officer subordinate to the Highway Authority of any offence coming to his knowledge which has been committed against this Act or any rule made under this Act, and shall be bound to assist the Highway Authority and its officers and servants in the exercise of their lawful authority.

62. *Duties of village officials.*—Every village officer, village assistant or other village official by whatever name called, shall forthwith inform the nearest police station or the nearest Highway Authority or any officer duly authorised by the Highway Authority, whenever he becomes aware that any survey mark or any boundary mark of any highway or any mark showing the building or control line determined in respect of a highway has been destroyed, damaged, removed, displaced or otherwise tampered with, or that any damage to any highway or encroachment on any highway has been made.

63. *Power to utilise highway for other than road purpose.*—The Highway Authority may utilise temporarily for other than road purposes land forming part of a highway which is not immediately required for the passage of traffic and dispose of the produce of such land.

64. *Summary eviction.*—Any person wrongfully occupies any land,—

(a) which is a part of a highway,

(b) the occupation of which contravenes any of the provisions of this Act and the said provisions do not provide for the eviction of such person shall be summarily evicted by the Collector in the manner provided in the Kerala Land Conservancy Act, 1957 (8 of 1958), on being required to do so by the Highway Authority or any officer authorised in this behalf by the Government.

65. *Inquiries to be held summarily.*—(1) The Highway Authority or the officer authorised by the Government in this behalf shall, if he desires to make any inquiry for the purposes of this Act, make the inquiry in the manner provided for holding a summary inquiry under the Kerala Land Conservancy Act, 1957 (8 of 1958) and all the provisions contained in the said Act relating to the holding of a summary inquiry, shall, so far as may be, apply.

(2) The Highway Authority and an officer authorised by the Government or the Highway Authority under this Act shall have the same powers for summoning and enforcing the attendance of any person and examining him on oath and compelling the production of documents as are vested in the revenue officers under the Kerala Revenue Summons and Enquiries Act, 1958.

66. *Registration of map made under section 8 not required.*—(1) Nothing in the Registration Act, 1908 (Central Act 16 of 1908), shall be deemed to require the registration of any map made under section 8.

(2) All such maps shall, for the purposes of sections 49 and 50 of the Registration Act, 1908, be deemed to have been and to be registered in accordance with the provisions of that Act:

Provided that the maps shall be accessible to the public in the manner prescribed.

67. *Certain persons to be public servants.*—The Highway Authority, the officers and other persons authorised or appointed under this Act shall be deemed to be public servants within the meaning of section 21 of the Indian Penal Code.

68. *Bar of jurisdiction.*—No Civil Court shall have jurisdiction to settle, decide or deal with any question which is by or under this Act required to be settled, decided or dealt with by the Highway Authority, the Collector, an officer or person authorised under this Act, any Authority under section 35 or section 44 or the Government.

69. *Protection of persons acting in good faith and limitation of suit or prosecution.*—(1) No suit, prosecution or other legal proceedings shall be instituted against any public servant or officer or person duly authorised under this Act in respect of anything in good faith done or intended to be done under this Act, or the rules or orders made thereunder.

(2) No suit or prosecution shall be instituted against any public servant or officer or person duly authorised under this Act in respect of anything done or intended to be done under this Act, unless the suit or prosecution has been instituted within six months from the date of the act complained of.

70. *Service of notices and bills.*—(1) Every notice or bill issued or prepared under this Act, may be served or presented,—

(a) by delivering or tendering it or sending it by post to the person to whom it is addressed, or to his agent, or

(b) if such a person or his agent is not found then by leaving it at his usual or last known place of abode or by delivering or tendering it to some adult male member of his family or by causing it to be fixed on some conspicuous part of the building or land, if any, to which it relates.

(2) Where a notice under this Act is required to be served upon an owner or occupier of a building or land, it shall not be necessary to name the owner or occupier, and the service thereof may be effected either—

(a) by delivering or tendering the notice or sending it by post to the owner or occupier or if there be more owners or occupiers than one, to any one of them, or

(b) if no such owner or occupier is found, then by giving or tendering the notice to an adult male member or servant of his family or by causing the notice to be fixed on some conspicuous part of the building or land to which the same relates.

(3) Whenever the person to whom a notice or bill is to be served is a minor, service upon his guardian or upon an adult male member or servant of his family shall be deemed to be service upon the minor.

71. *Power to make rules.*—(1) The Government may, by notification in the Gazette, and subject to the condition of previous publication, make rules to carry out all or any of the purposes of this Act.

(2) In particular and without prejudice to the generality of the foregoing power, the Government may make rules for all or any of the following matters:—

(a) the manner in which the notification may be published in the village and at the headquarters of the taluk under sub-section (2) of section 7;

(b) the other places at which copies of map may be open to inspection under section 8;

(c) the form of application and its contents under sub-section (2) of section 9;

(d) the other manner of publishing the notification under section 15;

(e) the conditions on which the amount of rent or charge on payment of which encroachments may be made on a highway;

(f) the manner in which a reference shall be made under section 35 or section 44;

(g) fixation of the date on which the betterment charges shall be payable under section 46 and instalments together with the rate of interest and the period within which such instalments shall be paid under the proviso to the said section;

(h) the conditions on which any land may be relinquished or delivered in exchange in favour of the Government under section 48;

(i) rules subject to which any highway or portion of it may be closed to traffic or any class of traffic or the number and speed or weight of vehicles using the highway may be regulated under section 50;

(j) rules subject to which plying of vehicles may be prohibited under section 51;

(k) the prevention of obstruction of view of persons using highways and of annoyance, danger or injury to the public;

(l) the prevention of obstruction, encroachment and nuisances on or near and of damages to highways;

(m) the proper maintenance of boundary marks demarcating highway boundaries and building and control lines;

(n) the prescription of various forms of applications required to be made and the forms of notices and bills required to be served on persons, the charges to be made for the supply of copies of maps, and the rent or other charges to be imposed or levied under the provisions of this Act;

(o) the general guidance of the Highway Authority in the discharge of its functions under this Act;

(p) regulation or diversions of existing rights of access;

(q) any other matter which is to be or may be prescribed.

(3) Every rule made under this Act shall be laid, as soon as may be after it is made, before the Legislative Assembly while it is in session for a total period of fourteen days which may be comprised in one session or in two successive sessions, and if, before the expiry of the session in which it is so laid, or the session immediately following, the Legislative Assembly makes any modification in the rule or decides that the rule should not be made, the rule shall thereafter have effect only in such modified form or be of no effect, as the case may be; so however that any such modifications or annulment shall be without prejudice to the validity of anything previously done under that rule.

72. *Savings.*—(1) Subject to the provisions of this section, nothing in this Act shall affect—

(a) the rights of any local authority to make any excavation for the purpose of laying, making, altering, repairing or renewing any sewer, drain, water course or other work; or

(b) the rights of any authority appointed under any law for the time being in force for gas or water, electricity, railways, tramways or trolly vehicles to erect any support or make any excavation for the purposes of laying, making altering, repairing or renewing any main, pipe, sluice, weir, electric line, duct, drain or other apparatus; or

(c) any land belonging to a railway administration or belonging to or used by a person holding a licence or sanction for the generation, transformation or distribution of electricity under the Indian Electricity Act, 1910, when such land is held or used by such person, for the purpose of generation, transformation or distribution of electricity, except in so far as such person may consent thereto; or

(d) any land within the limits of a cantonment or a port declared by or under any law made by Parliament or existing law to be a major port:

Provided that—

(i) any restrictions in force under section 9 as to construction, formation or laying out of means of access to, or from, any road, shall without any such consent as aforesaid, extend to any such land as is specified in clause (c) in so far as the restrictions relate to means of access over or under such land to, or from, land other than land so specified; and

(ii) any consent required for the purposes of this section shall not be unreasonably withheld and the question whether or not the consent so required is unreasonably withheld shall be determined by the Government and the decision of the Government on the question shall be final.

(2) Nothing in this Act shall affect any powers and duties of the telegraph authority under the provisions of the Indian Telegraph Act, 1885.

73. *Provisions of this Act or rules to prevail over inconsistent provisions in other laws.*—Save as provided in section 72, the provisions of this Act or rules made thereunder in regard to any matter dealt with thereby shall prevail over the provisions of any other law made by the State Legislature or any law which the State Legislature is competent to make or to amend, in so far as such law is inconsistent with the said provisions or rules, and such law to the extent of such inconsistency shall cease to apply or shall not apply to any such matter.

74. *Building and control lines along national highways.*—For the avoidance of doubt it is hereby declared that nothing in this Act shall apply to highways which are or have been declared by or under any law made by Parliament to be national highways:

Provided that if any highway is declared to be a national highway by or under any law made by Parliament, it shall be lawful for the State Government to fix or not to fix the building and control lines for different portions of the said highway under section 7 and thereafter the provisions of this Act in so far as they apply to the restrictions on buildings between the highway boundary and the building line or between the building line and the control line and other provisions relating to such building and control lines shall, *mutatis mutandis*, apply.

STATEMENT OF OBJECTS AND REASONS

Encroachments on road margins have been increasing and it is becoming more and more difficult to improve and widen the highways which results in serious impediments to road traffic. The safety in operation and the efficiency of road transport is getting seriously hampered due to the fast growing ribbon development alongside the highways.

2. To provide for the restriction of ribbon development along highways for the prevention and removal of encroachment thereon, for the construction, maintenance and development of highways, for the levy of betterment charges and for certain other matters, it has become an imperative necessity to enact suitable legislation.

3. The Bill is intended to achieve the above objects.

FINANCIAL MEMORANDUM

Clause 4 of the Bill seeks to provide for the appointment of Highway Authorities. Clause 6 seeks to provide for the appointment of such officers and servants as the Government may consider it necessary to serve under each Highway Authority.

2. Clause 15 of the Bill provides for the acquisition of land or right or interest in land required for a highway. Clause 19 provides for payment of amount as interim compensation.

3. Chapter V of the Bill seeks to provide for the payment of compensation for acquisition under clause 15 of land or right or interest in land, or for any damage that may be caused in the exercise of certain powers.

4. The amount of the expenditure that will have to be incurred will depend upon the number of officers and servants to be appointed to serve under the Highway Authorities, the extent of land that may have to be acquired etc. Therefore, it is not possible at this stage to estimate with any degree of accuracy the expenditure to be incurred by the enactment of the Bill.

MEMORANDUM REGARDING DELEGATED LEGISLATION

Clause 3 of the Bill seeks to empower the Government to declare, by notification, any road, way or land to be a highway and to classify it as a State Highway, a major district road, other district road or a village road. Clause 4 seeks to empower the Government to appoint Highway Authorities. Under clause 6, Government have power to appoint such officers and servants as they deem necessary to work under the Highway Authorities. Clause 7 seeks to empower the Government to fix by notification in the Gazette the boundaries of highways, the building line and the control line. Sub-clause (3) of clause 13 seeks to empower the Highway Authority to publish by notification in the Gazette the date on which the existing right of access to a highway has been diverted and alternative access has been given. Clause 15 seeks to empower the Government to publish a notification in respect of any land which shall be deemed to be a declaration that the land is needed for the purpose of a highway. Clause 28 seeks to empower the Government to authorise officers to make awards. Sub-clause (2) of clause 35 seeks to empower the Government to prescribe the form in which an application under sub-clause (1) of that clause shall be made. The Explanation to clause 43 seeks to empower the Government to specify, by notification in the Gazette, the date of commencement of the construction of any work and the date of completion of such work.

2. Clause 71 seeks to empower the Government to make rules, subject to the condition of previous publication, to carry out the purposes of the Act. The matters in respect of which rules may be made relate *inter-alia* to the manner in which notifications may be published in villages and at the headquarters of taluks under sub-clause (2) of clause 7, the other places at which copies of map may be open to inspection under clause 8, the form of application and its contents under sub-clause (2) of clause 9, the manner in which a reference shall be made under clause 35 or clause 44, and the conditions on which any land may be relinquished or delivered in exchange in favour of the Government under clause 48.

3. The matters in respect of which notifications may be issued or rules may be made are of an administrative or procedural nature. Further the rules shall be subject to the scrutiny of the Legislative Assembly. The delegation of Legislative power is thus of a normal character.

K. PANKAJAKSHAN

Government of Kerala
1976

Reg. No. KL/TV/12

KERALA GAZETTE

EXTRAORDINARY

PUBLISHED BY AUTHORITY

Vol. XXI] Trivandrum, Thursday, 16th December 1976 / 25th Agrahayana 1898 [No. 714

SECRETARIAT OF THE KERALA LEGISLATURE

NOTIFICATION

No. 10154/LA4/76. *Dated, Trivandrum, 16th December 1976.*

The Kerala Headload Workers Bill, 1976 together with the Statement of Objects and Reasons, the Financial Memorandum and the Memorandum regarding Delegated Legislation is published, under Rule 69 of the Rules of Procedure and Conduct of Business in the Kerala Legislative Assembly.

Dr. R. PRASANNAN,
Secretary,
Legislative Assembly.

PRINTED AND PUBLISHED BY THE S.G.P. AT THE GOVERNMENT PRESS,
TRIVANDRUM, 1976.

33/1681/MC.

THE KERALA HEADLOAD WORKERS BILL, 1976

A
BILL

to regulate the employment of headload workers in the State of Kerala and to make provision for their welfare, for the settlement of disputes in respect of their employment or non-employment and for matters connected therewith.

Preamble.—WHEREAS it is expedient to regulate the employment of headload workers in the State of Kerala and to make provision for their welfare, for the settlement of disputes in respect of their employment or non-employment and for matters connected therewith;

BE it enacted in the Twenty-seventh Year of the Republic of India as follows:—

CHAPTER I

Preliminary

1. *Short title, extent and commencement.*—(1) This Act may be called the Kerala Headload workers Act, 1976.

(2) It extends to the whole of the State of Kerala;

(3) It shall come into force on such date as the Government may, by notification in the Gazette, appoint, and different dates may be appointed for different areas and for different provisions of this Act and for different establishments.

2. *Definitions.*—In this Act, unless the context otherwise requires—

(a) "adolescent" means a person who has completed his fifteenth year of age but has not completed his eighteenth year of age;

(b) "adult" means a person who has completed his eighteenth year of age;

(c) "appellate authority" means, in relation to any area, the appellate authority appointed under section 4 for that area;

(d) "Board" means a Board constituted under section 13;

(e) "conciliation officer" means, in relation to any area, the Conciliation Officer appointed under section 3 for that area;

(f) "contractor", in relation to an establishment, means a person who undertakes to execute any work for such establishment by engaging headload workers on hire or otherwise, or who supplies headload workers as individuals or in groups for the purpose of engaging them in such establishment and includes a sub-contractor and a broker;

(g) "dispute" means any dispute or difference between employers and employers or between employers and headload workers, or between headload workers and headload workers, which is connected with the employment or non-employment or the terms of employment or the conditions of employment, of any headload worker.

Explanation.—Where any employer discharges, dismisses, retrenches or otherwise terminates the services of, or denies employment to, an individual headload worker, any dispute or difference between that headload worker and his employer connected with, or arising out of, such discharge, dismissal, retrenchment, termination or denial of employment shall be deemed to be a dispute notwithstanding that no other headload worker or any union of headload workers is a party to the dispute;

(h) "employer", in relation to a headload worker engaged by or through a contractor, means the principal employer and, in relation to any other headload worker, means the person who has ultimate control over the affairs of the establishment in or for which the headload worker is employed and includes any other person to whom the affairs of such establishment are entrusted, whether such person is called an agent, manager or by any other name prevailing in such establishment;

(i) "establishment" means an establishment specified in the Schedule and includes the precincts thereof;

(j) "family" means husband, wife, dependent parents, minor children and unmarried or widowed daughters;

(k) "fund" means a fund constituted under a scheme;

(l) "headload worker" means a person engaged directly or through a contractor in or for an establishment, whether for wages or not, for loading or unloading or carrying on head or person or in a trolly any article or articles in or from or to a vehicle or any place in such establishment, but does not include a person engaged by an individual for his private use;

(m) "Inspector" means an Inspector appointed under section 5;

(n) "minor" means a person who has not completed his fifteenth year of age;

(o) "principal employer" means an employer who engages a headload worker by or through a contractor in any establishment;

(p) "prescribed" means prescribed by rules made under this Act;

(q) "scheme" means a scheme made under this Act;

(r) "wages" means all remuneration, whether payable in cash or in kind, which would, if the terms of employment, express or

implied, were fulfilled, be payable to a headload worker employed in an establishment or for work done in such establishment, but does not include—

(i) the value of—

(A) any house accommodation, supply of light, water or medical attendance; or

(B) any other amenity or service excluded by general or special order of the Government; or

(ii) any contribution paid by the employer to any pension fund or any scheme of social insurance and the interest which may have accrued thereon; or

(iii) any travelling allowance or value of any travelling concession; or

(iv) any sum paid to a headload worker to defray special expenses entailed on him by the nature of his employment; or

(v) any gratuity payable on discharge; or

(vi) any bonus.

CHAPTER II

Conciliation Officers, appellate authorities and Inspectors

3. *Appointment of Conciliation Officers.*—The Government may, by notification in the Gazette, appoint for any area specified therein any officer of the Labour Department not below the rank of Deputy Labour Officer to be a conciliation officer for the purpose of performing the functions entrusted to the conciliation officer by or under this Act.

4. *Appellate authorities.*—The Government may, by notification in the Gazette, appoint for any area specified therein an officer of the Labour Department not below the rank of Deputy Labour Commissioner to be an appellate authority for the purpose of performing the functions of the appellate authority under this Act.

5. *Inspectors.*—(1) The Government may, by notification in the Gazette, appoint—

(a) such officers, or

(b) such persons as possess the prescribed qualifications, as they think fit to be Inspectors for the purpose of this Act and define the local limits within which they shall exercise their powers.

(2) Subject to any rules made in this behalf, an Inspector may, within the local limits for which he is appointed,—

(a) enter at all reasonable hours with such assistants a[illegible] fit, any establishment wherein headload workers are em[illegible]

or where from work is given out to headload workers, for the purpose of examining any register, record of wages or notices required to be kept or exhibited under any scheme or rule made under this Act and require the production thereof either on the spot or in the office of the Inspector;

(b) examine any person found in any such establishment, if he has reasonable cause to believe that such person is a headload worker employed therein or to whom work is given therefrom;

(c) require any person giving any work to a headload worker or a group of headload workers to give any information, which is in his power to give, in respect of the name and address of each of the persons to whom the work is given and in respect of payments made or to be made for the said work;

(d) seize or take copies of such registers, records of wages or notices or portions thereof, as he may consider relevant in respect of an offence under this Act or any scheme or rule made thereunder which he has reason to believe has been committed by an employer; and

(e) exercise such other powers as may be prescribed.

(3) Every Inspector appointed under this section shall be deemed to be a public servant within the meaning of section 21 of the Indian Penal Code.

(4) Every employer shall afford an Inspector all reasonable facilities for making an entry, inspection, examination or inquiry under this Act.

CHAPTER III

Hours and Limitations of Employment and Wages

6. *Hours of Work.*—Save as otherwise expressly provided in this Act, no adult headload worker shall be required to work for more than eight hours in any day and no adolescent or child headload worker shall be required to work for more than six hours in any day:

Provided that nothing contained in this section shall be deemed to prohibit an agreement between the employer and the headload workers for working for less than eight hours or six hours, as the case may be, on any particular day or days or on all days of employment or to affect any custom or practice prevailing in the locality under which the headload worker is required to work for less than eight hours or six hours, as the case may be.

7. *Daily intervals for rest.*—The period of work on each day shall be so fixed that no period shall exceed three hours of continuous work and no headload worker shall work for more than three hours continuously before he has had an interval for rest for at least ha[illegible]

8. *Wages Payable to headload workers.*—Every employer shall pay to any headload worker employed by him such wages as may be prescribed; and different wages may be prescribed for different establishment and for different kinds of work.

9. *Wages for work between 6 p. m. and 6 a. m.*—Where a headload worker is required by an employer to work at any time between 6 p. m. and 6 a. m., he shall be paid such additional wages as may be prescribed.

10. *Enforcement of payment of wages.*—(1) If any employer pays less than the wages due to a headload worker or refuses to pay such wages, the headload worker or an official of the Union of which he is a member may make an application to the Conciliation Officer for a direction under sub-section (2).

(2) On receipt of an application under sub-section (1), the Conciliation Officer shall, after giving the applicant and the employer an opportunity of being heard and after such inquiry, if any, which he may consider necessary, direct,—

(a) in the case of a claim arising out of the payment of less than the wages, the payment to the headload worker of the amount by which the wages payable to him exceeds the amount actually paid by the employer;

(b) in the case of a claim arising out of non-payment of wages, the payment of wages due to the headload worker.

(3) If as a result of a direction under sub-section (2), any amount of the wages becomes payable to a headload worker, the Conciliation Officer shall, if the amount is not paid in accordance with his direction, make a report to the Collector specifying the full particulars regarding the amount of the wages due to the headload worker, and on receipt of such report the Collector shall proceed to recover the same from the employer as if it were an arrear of public revenue due on land.

Explanation.—In this sub-section and section 30, "Collector" means the District Collector or any other Officer appointed by the Government to exercise the powers and perform the functions of a Collector under the Kerala Revenue Recovery Act, 1968 (15 of 1968).

11. *Appeal.*—(1) Against any order passed by a Conciliation Officer under section 10, an appeal shall lie to the appellate authority within a period of thirty days from the date of the order appealed against and the decision of the appellate authority on such appeal shall be final.

(2) The appellate authority shall have no powers to stay the operation of the order of the Conciliation Officer pending disposal of the appeal except for good and sufficient reasons to be recorded in writing.

CHAPTER IV

Scheme

12. *Scheme.*—(1) The Government may, by notification in the Gazette, make one or more scheme or schemes for any employment or group of employments in one or more area or areas specified in the notification, and by similar notification add to, amend or vary any such scheme or substitute another scheme for any such scheme:

Provided that no such notification shall come into force unless a draft is published in the Gazette and unless it is finalised after considering objections and suggestions received within one month of the publication of such draft in the Gazette.

(2) A scheme made under sub-section (1) may provide for all or any of the following matters, namely:—

(a) for the welfare of headload workers;

(b) for health and safety measures for headload workers;

(c) for the constitution of any fund or funds including provident fund for the benefit of headload workers, the vesting of such funds, the payment of contributions to be made to such funds and all matters relating thereto;

(d) for the manner in which, and the persons by whom, the cost of operating the scheme is to be defrayed, including any contributions to be paid by employers and headload workers and the rate of such contribution;

(e) for appointing persons and authorities who or which are to be responsible for the administration of the scheme and for the administration of funds constituted for the purposes aforesaid;

(f) for such incidental and supplementary matters as may be necessary or expedient for giving effect to the purposes of the scheme;

(g) generally for making better provision as regards the terms and conditions of employment of headload workers.

(3) If any question arises whether any scheme applies to any class of headload workers or employees, the matter shall be referred to the Government whose decision thereon shall be final.

(4) The Government may, by notification in the Gazette, add to the Schedule any establishment in respect of the headload workers whereof they are of opinion that a scheme should be made under this Act, and thereupon the establishment so added shall be deemed to be an establishment specified in the Schedule for the purposes of this Act.

(5) Every notification under sub-section (1) shall be laid, as soon as may be after it is issued, before the Legislative Assembly, while it is in session, for a total period of fourteen days which may be comprised in one session or in two successive sessions, and if, before the expiry of the session in which it is so laid or the session immediately following, the Legislative Assembly makes any modification in the notification or decides that the notification should not be issued, the notification shall thereafter have effect only in such modified form or be of no effect, as the case may be; so however that any such modification or annulment shall be without prejudice to the validity of anything previously done under that notification.

CHAPTER V

Board

13. *Board.*—(1) The Government may, by notification in the Gazette, establish a Board to be known by such name as may be specified in the notification, for one or more establishment or establishments in any area or areas.

(2) Every such Board shall be a body corporate with the name specified, having perpetual succession and common seal, with power to acquire, hold and dispose of property and to contract and may, by that name, sue or be sued.

(3) The Board shall consist of members nominated from time to time by the Government representing the employers, the headload workers and the Government.

(4) The members representing the employers and the headload workers shall be equal in number.

(5) The Government shall appoint one of the members of Board to be its Chairman.

(6) After nominations of all the members of the Board and the appointment of the Chairman, the Government shall publish their names in the Gazette.

(7) The term of office of the members of the Board shall be such as may be prescribed:

Provided that the Government may, at any time, by notification in the Gazette, remove any member from office.

(8) The Board shall exercise such powers and perform such functions and shall follow such procedure as may be specified in the scheme or the rules made under this Act.

(9) In the exercise of the powers and the discharge of its functions, the Board shall be bound by such directions as the Government may give to it, from time to time.

14. *Appointment of Officers for assisting the Board.*—(1) The Government may appoint such number of Officers as they think fit for assisting the Board in the exercise of its powers and the discharge of its functions under this Act.

(2) The Officers appointed under sub-section (1) shall exercise such powers and discharge such duties as may be prescribed.

15. *Dissolution of Board.*—(1) The Government may, by notification in the Gazette, direct that the Board shall be dissolved from such date as may be specified in the notification.

(2) When the Board is dissolved under sub-section (1),—

(a) all members, notwithstanding that their term of office has not expired, shall, from the date of the dissolution, be deemed to have vacated their offices as such members;

(b) all powers and duties of the Board shall, during the period of dissolution, be exercised and performed by such person or persons as the Government may appoint in that behalf; and

(c) all funds and other properties vested in the Board shall, during the period of dissolution, vest in the Government.

(3) The Government may, at any time, reconstitute the Board in accordance with the provisions of this Act.

CHAPTER VI

Disputes

16. *Settlement of disputes.*—(1) Where a dispute which is connected with the employment or non-employment or the terms of employment, or with the conditions of work, of any headload worker exists or is apprehended, the Conciliation Officer may hold conciliation proceedings and shall, for the purpose of bringing about a settlement of the dispute without delay, investigate the same and all matters affecting the merits and the right settlement thereof and may do all such things as he thinks fit for the purpose of promoting a fair and amicable settlement of the dispute.

(2) If a settlement of the dispute or of any of the matters in dispute is arrived at in the course of conciliation proceedings, the Conciliation Officer shall send a report thereof to the appellate authority.

(3) If a settlement of the dispute or any of the matters in dispute is not arrived at, the Conciliation Officer shall take a decision on the dispute or, as the case may be, on the matters in

respect of which no settlement has been arrived at and shall send a report of the dispute with a copy of his decision to the appellate authority.

(4) The decision of the Conciliation Officer under sub-section (3) shall, subject to the decision of the appellate authority under sub-section (6), be binding on all parties to the dispute.

(5) Any person aggrieved by any decision of the Conciliation Officer under sub-section (3) may, within such time as may be prescribed, appeal to the appellate authority against such decision.

(6) On receipt of an appeal under sub-section (5), the appellate authority shall make such inquiries as it deems fit and decide the appeal within a period of two weeks from the date of receipt of the appeal.

(7) Notwithstanding anything contained in any law for the time being in force, the appellate authority shall not stay the operation of the decision of the Conciliation Officer pending its decision on the appeal except for good and sufficient reasons to be recorded in writing.

17. *Reference or decision of disputes by Government.*—(1) Notwithstanding anything contained in section 16, where any dispute exists or is apprehended, the Government may, by order in writing and for reasons to be stated therein,—

(a) refer the dispute to the appellate authority constituted for the area in which the dispute exists or is apprehended, for decision; or

(b) decide the dispute themselves.

(2) Where a dispute is referred to an appellate authority under clause (a) of sub-section (1), that authority shall decide the dispute as if the reference by the Government were an appeal under sub-section (5) of section 16.

(3) The decision of the Government referred to in clause (b) of sub-section (1) shall be final and shall be given effect to by the parties to the dispute forthwith.

CHAPTER VII

Workmen's Compensation

18. *Application of Workmen's Compensation Act to headload workers.*—The provisions of the Workmen's Compensation Act, 1923 (Central Act 8 of 1923) and the rules made thereunder shall *mutatis mutandis* apply to the headload workers employed in any establishment, and, for that purpose, they shall be deemed to be workmen within the meaning of that Act.

CHAPTER VIII

Registers and Records

19. *Register of headload workers.*—(1) Such authority or officer as may be prescribed shall prepare a register of headload workers residing within its or his jurisdiction.

(2) The register shall contain such particulars as may be prescribed.

(3) The register shall be maintained by the authority or officer, as the case may be, in such manner, as may be prescribed.

20. *Maintenance of registers and records by employers.*—(1) Every employer shall maintain such registers and records as may be prescribed.

(2) The registers and records referred to in sub-section (1) shall contain such particulars and shalt be countersigned by such officer and shall be kept in such place, as may be prescribed.

CHAPTER IX

Penalties and Procedure

21. *Penalty for obstructions.*—(1) Whoever obstructs any Inspector or Conciliation Officer or appellate authority in the discharge of his or its duties under this Act or refuses or wilfully neglects to afford any Inspector reasonable facilities for making any inspection, examination or inquiry authorised by or under this Act, shall be punishable with imprisonment for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

(2) Whoever wilfully refuses to produce on the demand of an Inspector or a Conciliation Officer or an appellate authority any register or other document kept in pursuance of this Act or prevents or attempts to prevent or does anything which he has reason to believe is likely to prevent any person from appearing before, or being examined by, an Inspector or a Conciliation Officer or an appellate authority acting in pursuance of his or its duties under this Act, shall be punishable with imprisonment for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

22. *Penalty for making false statements, etc.*—Whoever for the purpose of avoiding any payment to be made by him under this Act or under a scheme or for enabling any other person to avoid such payment, knowingly makes or causes to be made any false statement

or false representation, shall be punishable with imprisonment for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

23. *Other penalties.*—Whoever contravenes or makes default in complying with any of the provisions of this Act or a Scheme or of any rule made under this Act shall, if no other penalty is elsewhere provided by or under this Act for such contravention or non-compliance, be punishable with imprisonment for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both, and in the case of a continuing contravention, with an additional fine which may extend to one hundred rupees for every day during which such contravention continues after conviction for the first such contravention.

24. *Enhanced penalty after previous conviction.*—If any person who has been convicted of any offence punishable under this Act is again found guilty of an offence involving a contravention of the same provision, he shall be punishable on a subsequent conviction with imprisonment for a term which may extend to one year or with fine which may extend to two thousand rupees, or with both.

25. *Offences by companies.*—(1) Where an offence under this Act has been committed by a company, every person who at the time the offence was committed was in charge of, and was responsible to, the company for the conduct of the business of the company, as well as the company shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly:

Provided that nothing contained in this sub-section shall render any such person liable to any punishment if he proves that the offence was committed without his knowledge or that he exercised all due diligence to prevent the commission of such offence.

(2) Notwithstanding anything contained in sub-section (1), where an offence under this Act has been committed with the consent or connivance of, or is attributable to any neglect on the part of, any Director, Manager, Secretary or other officer of the company such Director, Manager, Secretary or other officer shall also be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

Explanation.—For the purposes of this section—

(a) "Company" means any body corporate and includes a firm or other association of individuals; and

(b) "director", in relation to a firm, means a partner in the firm.

26. *Cognizance of offence.*—No court shall take cognizance of any offence punishable under this Act, except on complaint made by,

or with the previous sanction in writing of, the Government or an officer authorised by the Government in that behalf, and no court inferior to that of a Judicial Magistrate of the First Class shall try any offence punishable under this Act.

27. *Limitation of prosecutions.*—No court shall take cognizance of an offence punishable under this Act unless complaint thereof is made within three months from the date on which the alleged commission of the offence comes to the knowledge of the Government or the officer authorised under section 26.

CHAPTER X

Miscellaneous

28. *Bar of Jurisdiction of Civil Courts.*—No Civil Court shall entertain any suit or other proceedings to set aside or modify any order or decision passed by any authority or officer under this Act in respect of any of the matters falling within its or his scope.

29. *Power to take evidence on oath, etc.*—Any authority or officer exercising powers under this Act shall have the same powers as are vested in a Civil Court under the Code of Civil Procedure, 1908 (Central Act 5 of 1908), when trying a suit, in respect of the following matters, namely:—

(a) enforcing the attendance of any person and examining him on oath;

(b) requiring the discovery and production of documents;

(c) receiving evidence on affidavit;

(d) issuing commissions for the examination of witnesses;

(e) such other matters as may be prescribed;

and any proceeding before such authority or officer shall be deemed to be a judicial proceeding within the meaning of sections 193 and 228 and for the purposes of section 196, of the Indian Penal Code (Central Act 45 of 1860).

30. *Recovery of money due from employer.*—(1) Where any money is due to a headload worker under a settlement or decision referred to in sub-section (2) or sub-section (3) or sub-section (6) of section 16 or section 17, the headload worker himself or any other person authorised by him in that behalf or, in the case of death of the headload worker, his assignees or heirs, may, without prejudice to any other mode of recovery, make an application to the appellate authority for the recovery of the money due to him and if the appellate authority is satisfied that any money is so due, it shall issue a certificate to the Collector for the recovery of the amount as if it were an arrear of public revenue due on land:

Provided that every such application shall be made within one year from the date on which the money became due to the headload worker.

(2) Any amount due from an employer as contribution to any fund and any other amount due from an employer under this Act or a scheme or rule made under this Act may, if the amount is in arrear, be recovered as it were an arrear of public revenue due on land.

31. *Power to recover damages.*—Where an employer makes default in the payment of any contribution to the fund, the Government may recover from him such damages, not exceeding twenty-five per cent of the amount of arrears, as they think fit.

32. *Recovery of money due from headload workers.*—Where any money is due to an employer by a headload worker under a settlement or decision referred to in sub-section (2) or sub-section (3) or sub-section (6) of section 16 or section 17 the employer himself or any other person authorised by him in that behalf or, in the case of death of the employer, his assignees or heirs may, without prejudice to any other mode of recovery, make an application to the appellate authority for the recovery of the money due to him and if the appellate authority is satisfied that any money is so due, it shall order the payment of such money in such number of easy instalments as may be determined by it.

33. *Member of Board, etc., to be public servants.*—Every member of the Board and every officer appointed under this Act shall be deemed to be a public servant within the meaning of section 21 of the Indian Penal Code (Central Act 45 of 1860).

34. *Power to remove difficulties.*—If any difficulty arises in giving effect to the provisions of this Act or a scheme or any award or settlement under this Act, the Government may, by order, do anything not inconsistent with such provisions which appears to them necessary or expedient for the purpose of removing the difficulty.

35. *Protection of action taken in good faith.*—No suit, prosecution or other legal proceedings shall lie against the Government or any authority or officer in respect of anything which is in good faith done or intended to be done in pursuance of this Act or the scheme or any rule or order made under this Act.

36. *Power to make rules.*—(1) The Government may, by notification in the Gazette, make rules to carry out the purposes of this Act.

(2) In particular, and without prejudice to the generality of the foregoing power, such rules may provide for—

(a) the obligations of headload workers and employers;

(b) for regulating the entry into the scheme of headload workers, the registration of headload workers and employers, removal either temporarily or permanently of names from the registers and appeals against such removal to the appellate authority and the imposition of fees for registration;

(c) for regulating the employment of headload workers whether registered or not and the terms and conditions of such employment which are not specifically provided in this Act;

(d) for regulating, restricting or otherwise controlling the employment by any employer of headload workers not registered in his establishment;

(e) any other matter which has to be, or may be, prescribed.

(3) Every rule made under this Act shall be laid as soon as may be after it is made before the Legislative Assembly while it is in session for a total period of fourteen days, which may be comprised in one session or in two successive sessions, and if, before the expiry of the session in which it is so laid, or the session immediately following, the Legislative Assembly makes any modification in the rule or decides that the rule should not be made, the rule shall thereafter have effect only in such modified form or be of no effect, as the case may be; so however that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule.

THE SCHEDULE

[*See* section 2 (i)]

1. Iron and Steel Markets or Shops.
2. Cloth and Cotton Markets or Shops.
3. Grocery Markets or Shops.
4. Railway yards and goods-sheds.
5. Establishments employing workers for loading or unloading of goods and other operations incidental and connected thereto.
6. Vegetable markets (including onions and potatoes markets).
7. Establishments employing workers for loading, unloading and carrying of foodgrains and such other work incidental and connected thereto.
8. Markets and factories employing workers, which are not covered by any other entries in this Schedule.

STATEMENT OF OBJECTS AND REASONS

The Government are convinced that headload workers in this State are being exploited by their employers in the matter of payment of their wages and other matters connected with their welfare. It is, therefore, considered necessary to enact a legislation for the purpose of regulating the employment of headload workers in employments connected with trade, business, manufacture or supply to customers and making provision for their welfare, for the settlement of disputes in respect of their employer and non-employment and for matters connected therewith.

2. The Bill is intended to achieve the above object.

FINANCIAL MEMORANDUM

Clause 3 of the Bill seeks to provide for the appointment of officers not below the rank of Deputy Labour Officers to be Conciliation Officers. Clause 4 of the Bill envisages the appointment of officers not below the rank of Deputy Labour Commissioners to be appellate authorities. Clause 5 seeks to provide for the appointment of Inspectors for the purposes of the proposed legislation. Clause 7 seeks to empower the Government to establish Boards consisting of members representing employers, headload workers and the Government. Clause 8 seeks to provide for appointment of officers for assisting the Boards.

2. It is proposed to appoint the Conciliation Officers under the Industrial Disputes Act and the Zonal Deputy Commissioners of Labour to be Conciliation Officers and appellate authorities respectively and therefore no expenditure will be involved by the appointment of the Conciliation Officers and the appellate authorities.

3. The number of Inspectors to be appointed will depend on the actual work load. This can be known only when the law is implemented. It is not, therefore, possible at this stage to estimate with any degree of accuracy the number of Inspectors to be appointed or the expenditure to be incurred by the appointment of the Inspectors.

4. Eventhough the expenditure on account of the Boards and the staff shall be met from the Funds to be established under the schemes made under be proposed legislation, it will be necessary to meet such expenditure by the Government initially and to recoup it later from the Boards. It is presumed that the required number of Boards will be established immediately after the commencement of the legislation and that they will find enough resources to meet their administrative expenditure within a period of six months of their establishment. It is estimated that an amount of Rs. 1 lakh will have to be advanced to the Boards.

MEMORANDUM REGARDING DELEGATED LEGISLATION

Sub-clause (3) of clause 1 of the Bill seeks to provide that the Act shall come into force on such date as the Government may by notification in the Gazette appoint. Clause 3 seeks to empower the Government to appoint Officers of the Labour Department not below the rank of Deputy Labour Officer to be Conciliation Officers and clause 4 seeks to empower the Government to appoint Officers of the Labour Department not below the rank of Deputy Labour Commissioner to be appellate authorities. Clause 5 seeks to empower the Government to appoint Inspectors. According to clause 8 the wages to be paid to headload workers have to be prescribed by Government. Clause 9 seeks to empower the Government to prescribed additional wages for work between 6 p. m. and 6 a. m. Clause 12 seeks to empower the Government to make by notification in the Gazette, one or more schemes for any establishment or group of establishments in one or more areas specified in the notification and also to add to, amend or vary any such scheme or substitute another scheme for any such scheme. The notification has to be finalised after publishing a draft thereof and after considering objections and suggestions received within one month of the publication of the draft. A scheme may provide *inter-alia* for the welfare of headload workers, for the health and safety measures for headload workers, for the constitution of funds, the vesting of such funds, the payment of contributions to such funds and generally for such other matters incedental as may be deemed it. Sub-clause (4) of clause 12 seeks to empower the Government to add to the schedule any establishment if they are of opinion that a scheme should be made in respect of that establishment. Clause 13 seeks to empower the Government to establish by notification in the Gazette a Board for one or more establishments in any area or areas. The members and Chairman of the Board have to be appointed by the Government. The term of the Chairman and other members of the Board shall be such as may be prescribed, provided that the Government may at any time by notification in the Gazette remove any member from office. The powers, functions and procedure of the Board shall be such as may be specified in the scheme or the rules. Sub-clause (9) of the clause empowers the Government to issue directions to the Board. Clause 14 seeks to empower the Government to appoint such number of Officers as they think fit for assisting the Board. Such Officers shall exercise such powers and discharge such duties as may be prescribed. Clause 15 seeks to empower the Government to dissolve the Board by notification in the Gazette, to appoint persons to exercise and performs the powers and duties of the Board and to reconstitute the Board at any time. Clause 17 seeks to empower the Government to refer any dispute to the appellate authority or to decide any dispute

themselves. Clause 19 seeks to empower the Government to prescribe the authorities or Officers who shall prepare registers of headload workers. The particulars to be contained in the registers and the manner in which they shall be maintained shall be as prescribed by the Government. Clause 20 seeks to empower the Government to prescribe the registers and records to be maintained by the employers and the particulars which they should contain and also the Officer by whom they shall be countersigned and the place where they shall be kept. Clause 26 seeks to provide that no court shall take cognisance of any offence punishable under the Act except on complaint made by or with the previous sanction in writing of the Government or an Officer authorised by the Government in that behalf. Clause 29 seeks to provide that any authority or Officer in exercising powers under the Act shall have the same powers as are vested in a Civil Court when trying a suit in respect of such matters (other than those specifically stated in the clause) as may be prescribed. Clause 34 seeks to empower the Government to make orders not inconsistent with the provisions of the Act to remove difficulties which may arise in giving effect to the provisions of the Act or a scheme or any award or settlement under the Act. Clause 36 seeks to empower the Government to make rules to carry out the purpose of the Act. Such rules may provide *inter-alia* for the obligations of headload workers and employers, for regulating the entry into the scheme of headload workers, for regulating the employment of headload workers and any other matter which has to be or may be prescribed.

The matters in respect of which schemes or rules may be made or notification, order or direction may be issued are matters of an administrative or routine nature or matters of procedure. Further the schemes and the rules have to be laid before the Legislative Assembly. The delegation of legislative power is, therefore, of a normal character.

VAKKOM PURUSHOTHAMAN